

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

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| JOHN J. McCARTHY, | : | |
| | : | |
| Petitioner | : | CIVIL NO. 1:CV-15-1399 |
| vs. | : | |
| | : | (Judge Caldwell) |
| WARDEN EBBERT, | : | |
| | : | |
| Respondent | : | |

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| JOHN J. McCARTHY, | : | |
| | : | |
| Petitioner | : | CIVIL NO. 1:CV-15-1786 |
| vs. | : | |
| | : | (Judge Caldwell) |
| WARDEN EBBERT | : | |
| | : | |
| Respondent | : | |

MEMORANDUM

I. *Introduction*

Presently before the court are two petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 filed by John McCarthy, formerly a federal prisoner housed at the United States Penitentiary in Lewisburg, Pennsylvania. In both cases, McCarthy, relying on *Johnson v. United States*, ___ U.S. ___, 135 S.Ct. 2551, 192 L.Ed.2d 5569 (2015), argues his sentence was improperly enhanced under the Armed Career Criminal Act (ACCA). See *McCarthy v. Warden Ebbert*, No. 15-CV-1399 (M. D. Pa.) (Caldwell, J.) and *McCarthy v. Warden Ebbert*, No. 15-CV-1786 (M.D. Pa.) (Caldwell, J.). As the cases

present identical claims, they will be consolidated pursuant to Fed. R. Civ. P. 42(a) and the consolidated matter will proceed under *McCarthy v. Warden Ebbert*, Civ. No. 1:15-1399, the action filed first.

II. *Discussion*

The consolidation of actions involving “a common question of law or fact” under Federal Rule of Civil Procedure 42(a) is a matter of discretion. *Borough of Olyphant v. PPL Corp.*, 153 F. App’x 80, 82 (3d Cir. 2005)(nonprecedential) (“A district court has broad discretion when determining whether consolidation is appropriate.”) Rule 42 provides:

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may:

(1) join for hearing or trial any or all matters at issue in the actions;

(2) consolidate the actions; or

(3) issue any other orders to avoid unnecessary cost or delay.

Fed. R. Civ. P. 42(a).

In both Petitions before the court, McCarthy argues his sentence was improperly enhanced under the ACCA. *See McCarthy v. Warden Ebbert*, Civ. No. 1:15-1399 (M. D. Pa.) (Caldwell, J.) and *McCarthy v. Warden Ebbert*, Civ. No. 1:15-1786 (M.D. Pa.) (Caldwell, J.). Consequently, since both actions contain common questions of law and fact, this court will order the consolidation of the two petitions pursuant to Fed. R. Civ.

P. 42(a), and we will proceed with the consolidated matter under McCarthy's action filed first, Civ. No. 1:15-0399.

An appropriate Order follows.

/s/ William W. Caldwell
William W. Caldwell
United States District Judge

Date: April 24, 2017